

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

3SHAPE A/S,)
)
Plaintiff,)
)
v.)
) C.A. No. 18-886-LPS
ALIGN TECHNOLOGY, INC.,)
)
Defendant.)
)
)

[PROPOSED] ORDER

At Wilmington this ____ day of ____, 2021, having considered Defendant Align Technology, Inc.’s (“Align”) Motion for Summary Judgment and Preclusion of Expert Testimony Under Daubert, as well as the papers and argument submitted in connection therewith, and having found that Align’s motion should be granted;

NOW THEREFORE, Align’s motion is GRANTED as follows:

1. Summary judgment is entered in favor of Align that claims 1-5, 9-13, 16-19, 21 and 22 of U.S. Patent No. 10,349,042 are invalid for lack of written description.
2. Summary judgment is entered in favor of Align that claims 18, 18, and 19 of U.S. Patent No. 10,349,042 are invalid as indefinite.
3. Summary judgment is entered in favor of Align that Align does not infringe Claims 1-25 of U.S. Patent No. 9,629,551.
4. 3Shape is not entitled to damages on U.S. Patent No. 10,349,042 for sales occurring before 3Shape provided notice of that patent.

5. 3Shape's expert Dr. James Zavislan cannot rely on anything other than the plain and ordinary meaning of "non-parallel" and "diverging."
6. 3Shape's expert Dr. Edward Delp cannot contradict the Court's claim construction or the meaning of "permanently disregarding" and "single evaluation."
7. 3Shape's expert Rich Goodin is precluded from testifying.

United States District Judge